

December 1, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Electrolux Home Products, Inc.

Date of Filing: November 3, 2008

Case Number: TEE-0056

This Decision and Order considers an Application for Exception filed by Electrolux Home Products, Inc., (Electrolux) seeking relief from the provisions of 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers (Refrigerator Efficiency Standards). In its exception request, Electrolux asserts that the firm will suffer an undue hardship and inequity if required to adhere to the Refrigerator Efficiency Standards, codified at 10 C.F.R. § 430.32. If Electrolux's Application for Exception is granted, the firm will receive exception relief from the energy efficiency standard applicable to a new automatic defrost refrigerator-freezer, with bottom-mounted freezer and through-the-door ice service. Electrolux proposes to introduce this appliance into the nationwide marketplace. As set forth in this Decision and Order, we have concluded that Electrolux's Application for Exception should be granted.

I. Background

A. Refrigerator Efficiency Standards

The Refrigerator Efficiency Standards, 10 C.F.R. Part 430, were published as a final rule by the Department of Energy (DOE) on April 28, 1997, 62 Fed. Reg. 23102, as mandated by Congress in Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6309 (EPCA). In the EPCA, Congress directed that DOE review and revise energy conservation standards for major appliances,

including refrigerator-freezer products. These regulations were promulgated by the agency in 1989, 54 Fed. Reg. 47916 (November 17, 1989). EPCA § 325(b)(3)(B), 42 U.S.C. § 6295(b)(3)(B). Appliance manufacturers are prohibited from introducing into commerce any covered product that is not in compliance with the applicable energy efficiency standards established under the EPCA. 42 U.S.C. § 6302(a)(5). The Refrigerator Efficiency Standards were designed to reduce energy use in classes of refrigerator products by up to 30 percent below the prior standards, and thereby reduce consumer costs as well as emission of air pollutants associated with electricity production.¹ The Refrigerator Efficiency Standards became effective July 1, 2001.

B. Application for Exception

Electrolux is a Delaware Corporation with corporate headquarters in Augusta, Georgia. Its products include refrigerators, freezers, ranges, dishwashers, dryers, and air-conditioners sold under a variety of brand names. The firm indicates that it has developed a bottom-mount freezer with through-the door ice service. Electrolux states in its Application for Exception that in the absence of exception relief, the firm will be unable to market its automatic defrost refrigerator-freezer with bottom-mounted freezer with through-the-door ice service. Since through-the-door ice service was not offered with bottom-mounted freezers at the time the Refrigerator Efficiency Standards were promulgated, there was no energy efficiency standard established for this product within the eighteen classes of product established. At the same time, Electrolux's product clearly fits within the regulatory definition of "electric refrigerator-freezer," 10 C.F.R. § 430.2, and it will be unable to meet the Class 5 energy standard applicable to refrigerator-freezers with bottom-mounted freezer without through-the-door ice server due to the energy loss inherent in adding the through-the-door ice service feature. Therefore, Electrolux seeks relief from the existing energy efficiency standards that will permit

¹ For each of eighteen classes of refrigerator products, the Refrigerator Efficiency Standards establish energy efficiency equations which limit energy usage. These equations are expressed in kilowatt-hours per year (kWh/yr). For example, the consumption equation for the product Class 4, "Refrigerator-Freezers - automatic defrost with side-mounted freezer without through-the-door ice service" is a maximum of "4.91AV+507.5," where AV is the "total adjusted volume" of the particular unit expressed in cubic feet.

it to market this product in the U.S. It requests that we allow it to apply an energy efficiency standard for its new automatic defrost refrigerator-freezer with bottom-mounted freezer with through-the-door ice service, based upon the incremental increase in allowable energy consumption properly attributable to this feature. We received one interested party comment on Electrolux's Application for Exception. Whirlpool Corp. stated that "any grant of exception relief" should "include a clear statement that the DOE's energy test procedures must be properly followed."

II. Analysis

The present case is virtually indistinguishable from one in which we granted exception relief from the Refrigerator Efficiency Standards to Maytag Corporation, which sought to market the same type of refrigerator: a bottom-mounted freezer with through-the-door ice service. *Maytag Corp.*, 29 DOE ¶ 81,009 (2005) (*Maytag*). Accordingly, we will provide Electrolux the same type of relief that we granted to Maytag.

In *Maytag*, we determined that an appropriate standard for maximum energy use can be established for the firm's automatic defrost refrigerator-freezer, with bottom-mounted freezer with through-the-door ice service, by adding $0.40AV+80.0$ to the energy efficiency equation, $4.60AV+459.0$, established for "Refrigerator-Freezers - automatic defrost with bottom-mounted freezer without through-the-door ice service" (Class 5). The combination of these values yields an energy consumption standard of $5.0AV+539.0$.

Accordingly, Electrolux will be granted exception relief establishing the energy standard equation for maximum energy use (kWh/yr) for Electrolux's automatic defrost refrigerator-freezer, with bottom-mounted freezer with through-the-door ice service, of $5.0AV+539.0$. Electrolux must label its new product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305,² and

² This labeling instruction is in accordance with Federal Trade Commission regulations set forth at 16 C.F.R. § 305.10(b), which states:

(b) When the estimated annual energy consumption or energy efficiency rating of a given model of a covered product falls

state the expected energy consumption based upon appropriate testing under DOE test protocol. See 10 C.F.R. § 430.23(b). The exception relief granted in this decision will remain in effect until such time as the DOE promulgates an energy efficiency standard for "Refrigerator-Freezers-automatic defrost with bottom-mounted freezer with through-the-door ice service" or the DOE modifies the existing standard for "Refrigerator-Freezers-automatic defrost with bottom-mounted freezer without through-the-door ice service" (Class 5).

It Is Therefore Ordered That:

(1) The Application for Exception filed by Electrolux Home Products, Inc. (Electrolux) on November 3, 2008, is hereby granted as set forth in paragraphs (2) and (3) below.

(2) Notwithstanding the requirements of 10 C.F.R. Part 430(a), the energy standard equation for maximum energy use (kWh/yr) is established as $5.0AV+539.0$ for the "automatic defrost refrigerator-freezer, with bottom-mounted freezer with through-the-door ice service," produced by Electrolux, as described in this decision. The exception relief granted in this decision will remain in effect until the DOE promulgates an energy efficiency standard for "Refrigerator-Freezers-automatic defrost with bottom-mounted freezer with through-the-door ice service" or the DOE modifies the existing standard for "Refrigerator-Freezers automatic defrost with bottom-mounted freezer without through-the-door ice service" (Class 5).

(3) In marketing the refrigerator-freezer described in this decision, Electrolux shall label its product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305, and state the expected

outside the limits of the current range for that product, which could result from the introduction of a new or changed model, the manufacturer shall

- (1) Omit placement of such product on the scale, and
- (2) Add one of the two sentences below, as appropriate, in the space just below the scale, as follows:

The estimated annual energy consumption of this model was not available at the time the range was published.

The energy efficiency rating of this model was not available at the time the range was published.

energy consumption based upon appropriate testing under DOE test protocol. See 10 C.F.R. § 430.23(a).

(4) Any person aggrieved by the approval of exception relief in this Decision and Order may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: December 1, 2008